

Attachment A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

FILED

MAR 02 2020

U.S. DISTRICT COURT-WVND
CLARKSBURG, WV 26301

David S. Hopper, 11503-032)
 FCI-Gilmer)
 P.O. Box 6000)
 Glenville, WV 26351)
 (Full name under which you were convicted,)
 prison number, place of confinement, and)
 full mailing address))

**Petition for Habeas Corpus
Pursuant to 28 U.S.C. § 2241**

Petitioner,
vs.

Civil Action No. 3:20cv38
 (to be assigned by Clerk)

Warden, R. Hodgins)
 (Name of Warden or other authorized person)
 where you are incarcerated))

Groh
 Trumble
 Sims

Respondent.

Important notes to read before completing this form:

- ★ Please read the entire petition **before** filling it out. Answer **only** those questions which pertain to your claim(s).

1. This petition concerns (check the appropriate box):

- ☐ a conviction
☒ a sentence
☐ jail or prison conditions
☐ prison disciplinary proceedings
☐ a parole problem
☐ other, state briefly: _____

Attachment A

2. Are you represented by counsel? ☐ Yes ☒ No

If you answered yes, list your counsel's name and address: _____

3. List the name and location of the court which imposed your sentence:

United States District Court for the Eastern District of
Kentucky at Covington. 35 W. Fifth Street, Covington, Ky
41011-1401

4. List the case number, if known: 2:06-cr-00015-DLB-EBA

5. List the nature of the offense for which the sentence was imposed:

18 USC § 924(c) (2-Counts)

Use of Firearm in relation to a crime of violence

6. List the date each sentence was imposed and the terms of the sentence:

November 7, 2007: 384-months

7. What was your plea to each count? (Check one)

- ☒ Guilty
☐ Not Guilty
☐ Nolo Contendere

Attachment A

8. If you were found guilty after a plea of not guilty, how was that finding made?

- ☐ A jury
- ☐ A Judge without a jury
- ☐ A Magistrate Judge without a jury

9. Did you appeal from the judgment of conviction or imposition of the sentence?

☐ Yes ☒ No

10. If you did appeal, give the following information for each appeal:

- A. Name of Court: _____
- B. Result: _____
- C. Date of Result: _____
- D. Grounds raised (List each one): _____

Note: if you filed an appeal in more than one court, attach an additional sheet of paper of the same size and give all of the information requested in Question 10, A through D.

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? This is called a post-conviction pleading.

☒ Yes ☐ No

If your answer was yes, complete the following sections:

A. First post-conviction proceeding:

- 1. Name of Court: Campbell Circuit Court

Attachment A

2. Nature of Proceeding: RCr 11.42 (Post Conviction)
3. Grounds Raised: Plea agreement not being fulfilled
4. Did you receive an evidentiary hearing ? ☒ Yes ☐ No
5. Result: State sentence discharged
6. Date of Result: 4/10/2015

B. Second post-conviction proceeding:

1. Name of Court: Grant County Circuit Court
2. Nature of Proceeding: RCr 11.42
3. Grounds Raised: Plea agreement not being fulfilled
4. Did you receive an evidentiary hearing ? ☐ Yes ☒ No*
5. Result: State sentence discharged
6. Date of Result: 4/10/2015

C. Did you appeal to the result of the post conviction proceeding(s) to the highest court having jurisdiction?

1. First proceeding: ☐ Yes ☒ No Result: _____
2. Second proceeding: ☐ Yes ☒ No Result: _____

D. If you did not appeal the adverse result of the post-conviction proceeding(s), explain briefly why not: Lower court decision was in my favor.

12. For your information, the following is a list of the most frequently raised grounds for relief in applications for habeas corpus pursuant to 28 U.S.C. §2241. You may raise any grounds which you may have other than those listed. However, in this application, you should raise all available grounds on which you base your petition. **Do not check** any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. **The petition will be returned to you if you merely check one or more of the grounds:**

- A. U.S. Parole Commission unlawfully revoked my parole.
- B. Federal Bureau of Prisons unlawfully computed my sentence.

Attachment A

- C. Federal Bureau of Prisons unlawfully denied me credit for time served in state or federal prison.
- D. Federal Bureau of Prisons or State prison system unlawfully revoked my good time credits.
- E. There is an unlawful detainer lodged against me.
- F. I am a citizen and resident of a foreign country and I am in custody for an act which I had a right to commit under the laws of my country.
- G. The act for which I was convicted is no longer considered to be a crime, and I cannot raise this issue in a §2254 petition or a §2255 motion.

CAUTION: if you fail to set forth all of the grounds in this petition at this time, you may be barred from presenting additional grounds at a later date.

State clearly every ground on which you are seeking relief. Summarize briefly the facts supporting each ground. If necessary, attach a total of five (5) typed or ten (10) neatly printed pages maximum for all grounds and all attachments.

A. Ground one:

THE BOP IS UNLAWFULLY COMPUTING MY FEDERAL SENTENCE, WHEN IT IS NOT GRANTING SENTENCE CREDIT FOR TIME SERVED IN STATE CUSTODY PRIOR TO BEING IN FEDERAL CUSTODY. The BOP is refusing to grant above state custody credit despite the federal sentencing court specifically stating that it would do so if the state court so determined.

Supporting facts: tell your story briefly without citing cases or law. You are cautioned that you must state facts, not conclusion, in support of your grounds. A “rule of thumb” to follow is this: who did exactly what to violate your rights at what time and place).

At both the Change of Plea Hearing and Sentencing Hearing, the federal court informed me that the "yet-to-be" adjudicated state court judges would be the final determinator of if the federal sentence and state sentences would serve consecutive or concurrent to one another. (See attached)

B. Ground two:

Attachment A

THE BOP IS UNLAWFULLY DENING SENTENCE CREDIT FOR TIME
SERVED IN STATE (KY) CUSTODY.

Supporting facts:

The facts to support this Ground are related to the facts
supporting Ground One (1), and Petitioner would fully
incorporate the same arguments (facts) hereto.

C. Ground three:

The BOP is unlawfully executing my imposed sentence by not
applying the "clarification" of 18 USC § 924(c) made by
Congress in the First Step Act (Section 403), which allows
for no more than a 168-month sentence. The 384-month
sentence, as calculated by the BOP, is contrary to law.

Supporting facts:

Section 403 of the First Step Act clarified what the term
"second subsequent conviction" means in § 924(c). Under
this clarified definition, courts are no longer permitted
to "stack" multiple Counts of the same indictment as second
or subsequent convictions. (SEE ATTACHED)...

D. Ground four:

Attachment A

Supporting facts:

13. Were all of the above grounds presented to another court, state or federal? If not, state which grounds were not presented. If yes, state the name of the court, date of decision, and the nature of the outcome:

Yes. Campbell and Grant Circuit courts (KY). 4/10/2015.

Both State Courts discharged the remainder of their imposed state sentences to prevent further breaching of the sentences that they imposed, which called for concurrent state and federal sentences.

14. If this petition concerns prison disciplinary proceedings, a parole problem, computation of sentence, or other case under 28 U.S.C. § 2241, answer the following questions:

- A. Did you present the facts in relation to your present petition in the prison's internal grievance procedure?

☒ Yes ☐ No

1. If your answer to "A" above was yes, what was the result:

Denied

Attachment A

2. If your answer to "A" above was no, explain:

B. If you are a federal prisoner, did you present your claim to the Bureau of Prisons or other federal agency for administrative action?

☒ Yes ☐ No

1. If your answer to "B" above was yes, what was the result:

Denied

2. If your answer to "B" above was no, explain:

15. Relief: State here, as briefly as possible, exactly what you want the court to do for you:

1. Make **no** legal arguments.

2. Cite **no** cases or statutes.

I, David Hopper, respectfully request that the Court would
so Order the BOP to recognize the time spent in state custody
[2/9/2006 - 4/10/2015] to have satisfied the proportionate
amount to my federal sentence, which was imposed on 11/07/2007.
This would be to force the BOP to adhere to what the federal
sentencing court had specifically stated at the Change of
Plea Hearing and at Final Sentencing. Likewise, such an
Order of this Court would give a fuller measure to the previous
Orders of the two state courts.

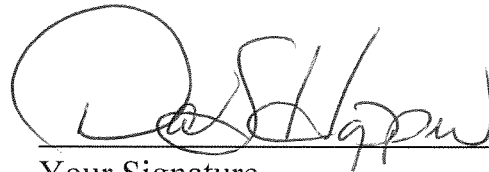
Attachment A

16. If a previous motion to vacate or modify a prisoner's sentence, pursuant to Section 2255, was not filed, or if such a motion was filed and denied, the reasons why Petitioner's remedy by way of Section 2255 is inadequate or ineffective to test the legality of the detention.

The US District Court which imposed sentence (US Dist EDKY)
entered an Order on 2/12/2020, stating that Petitioner
must pursue the present in this Court. [Doc #: 129, 06-cr-15]

A 2255 petition would therefore be moot, based on that
court's stance, and a 2241 petition is the only available
remedy to correct the unlawful execution of the federally
imposed sentence.

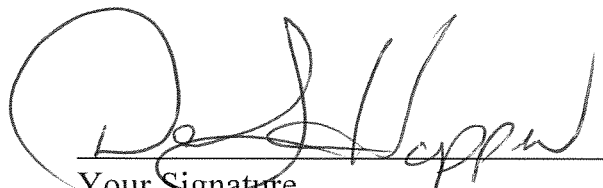
Signed this 28th day of February, 2020.
(day) (month) (year)


Your Signature

Signature of Attorney (if any)

I declare (or certify, verify, or state), under penalty of perjury, that the foregoing is true and correct.

Date of Signature: 2/28/2020


Your Signature

Attachment D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

David S. Hopper
Your full name

v.

Civil Action No.: _____

Warden, R. Hodgras

Enter above the full name of respondent in this action

Certificate of Service

I, David Hopper (your name here), appearing *pro se*, hereby certify that
I have served the foregoing PETITION FOR HABEAS CORPUS (title of document
being sent) upon the respondent by depositing true copies of the same in the United States
mail, postage prepaid, upon the following counsel of record for the respondent on
FEBRUARY 28, 2020 (insert date here):

(List name and address of counsel for respondent)

David Hopper
(sign your name)